

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

Golden  
29826

FILE: B-215915.2

DATE: November 21, 1984

MATTER OF: System Engineering, Inc.--  
Reconsideration

## DIGEST:

1. Prior decision is affirmed on reconsideration where protester has not shown any error of law or fact which would warrant reversal of the decision.
2. Protest that awardee might provide a nonconforming item raises a matter of contract administration which is the responsibility of the procuring agency, not GAO.

System Engineering Inc. (SEI), requests reconsideration of our decision System Engineering Inc., B-215915, Sept. 28, 1984, 84-2 C.P.D. ¶ 366. In that decision, we dismissed SEI's protest against an award to a firm which allegedly would supply a nonconforming product. We concluded SEI was not an interested party under our Bid Protest Procedures to challenge the award to the low bidder, Mathers Control Incorporated (Mathers), under invitation for bids (IFB) No. DTCG40-84-B-0117, issued by the United States Coast Guard (Coast Guard).

The agency advised us that the protester's bid was not received at the contracting office until after the bid opening time established in the IFB. The bid was rejected as late under the late bid rules and was returned to SEI. The agency reported that five bids were received timely and award was made to Mathers. We noted that the record showed that the protester had not contested the rejection of its bid as late and if the protester were to raise this matter at that date, it would have been untimely. 4 C.F.R. § 21.2(b)(2) (1984).

Further, we dismissed the protest in accordance with 4 C.F.R. § 21.2(g) (1984) of our Bid Protest Procedures, which provides that where the propriety of dismissal becomes clear only after information is provided by the agency, the protest may be dismissed at that time without further development of the record.

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On October 4, 1984, in response to the agency report, but subsequent to the date our decision was issued, SEI, for the first time, provided letters it wrote to the Coast Guard concerning the rejection of its bid as late. By letter of July 3, 1984, SEI protested to the agency the rejection of its bid as late. However, on July 10, 1984, it advised the Coast Guard that it would not pursue the issue of the timeliness of its bid to GAO, "based on the understanding and assurance" given by the Coast Guard contracting office that if Mathers "should lose the contract for any reason," SEI would be notified and given an opportunity to bid on the project. SEI further acknowledged that it understood that Mathers had been awarded the contract, but stated that the Coast Guard had agreed that if Mathers should lose the contract, the Coast Guard would resolicit bids and SEI then would have an opportunity to rebid. SEI advises that it accepted the Coast Guard reasoning that, therefore, there was no reason to protest the late bid's rejection and SEI decided not to pursue the agency protest or to file a protest with GAO concerning that issue. SEI argues that the Coast Guard action in raising this issue in its report was contrary to SEI's understanding with the Coast Guard, and that we now should consider the late bid issue and decide this case on the merits.

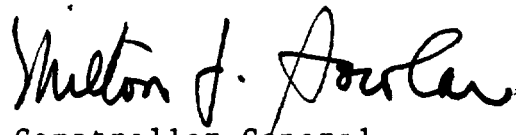
We affirm our decision.

In our view, SEI's explanation of its decision not to protest the rejection of its bid does not provide a basis to reverse our decision. We do not find that the Coast Guard has altered its position. The Coast Guard advised SEI that Mathers had been awarded the contract. The Coast Guard did not promise to review the award nor did it indicate cancellation or termination of the award was contemplated. SEI declined to pursue its protest concerning its late bid based on its apparent belief that Mathers ultimately would "lose" the contract, not on the Coast Guard's representations. There is no evidence that the Coast Guard misinformed or misled SEI. Under these circumstances, we find no basis for us to consider SEI's protest against rejection of its bid.

In any event, SEI's protest against award to Mathers is based on Mathers' alleged failure to provide a servo positioner mechanism which conforms to the solicitation specifications. In this connection, SEI refers to the specification requirement that the contractor furnish components "which have demonstrated satisfactory operational experience

and reliability in shipboard main propulsion control system and asserts that the servo positioner which Mathers plans to provide has no history of shipboard operational experience and, as of the date of contract award, was "still on the drawing board."

The IFB did not require bidders to submit a particular model or brand name product. Mathers did not take any exception to the IFB requirements. Furthermore, the specification at issue did not require bidders to demonstrate compliance prior to award; rather, the IFB requires the contractor to do so. Once a contract is awarded, the question of whether the contractor supplies an item conforming to the terms of the contract is a matter of contract compliance and administration, which are the responsibility of the contracting agency, not our Office under our Bid Protest Procedures. Lion Brothers Company, Inc., B-212960, Dec. 20, 1983, 84-1 C.P.D. ¶ 7.

for   
Comptroller General  
of the United States